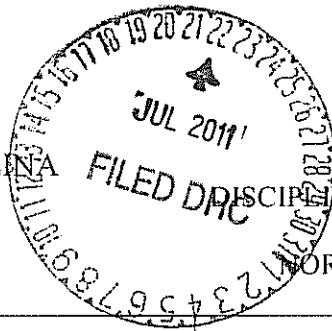


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 6

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

STEVEN E. PHILO, Attorney,
Defendant

AMENDED
COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Steven E. Philo ("Philo" or "Defendant"), was admitted to the North Carolina State Bar on September 1, 1974, and is, and was at all times referred to herein, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar, and the Rules of Professional Conduct.

Upon information and belief:

3. During the relevant periods referred to herein, Philo was engaged in the practice of law in the State of North Carolina at a law office in Franklin, Macon County, North Carolina.

FIRST CLAIM FOR RELIEF

4. Paragraphs 1 through 3 are re-alleged and fully incorporated as if set forth herein.

5. Ultima WNC Development, L.L.C. ("Ultima"), was the developer of the Wildflower subdivision in Franklin, North Carolina, and marketed its properties nationally.

6. As an incentive for purchasing Wildflower lots, Ultima offered buyers a post-closing cash back arrangement. Under this arrangement, Ultima would rebate a

percentage of the purchase price at closing to the buyer sufficient to pay the monthly mortgage interest payments for a period of time. Ultima would deposit the rebate funds in an escrow account in the name of the purchaser from which the monthly mortgage interest payments would be made until the escrow account was depleted. If the buyer resold the lot prior to depletion of the escrow account, the remaining balance in the escrow account would be paid to the buyer. This interest cash back arrangement was documented in a Contract Addendum that accompanied each Offer to Purchase and Contract for Wildflower lot sales.

7. Macon Bank, Inc. (“Macon Bank”) of Franklin, North Carolina, provided financing for numerous purchasers of the Wildflower lots.

8. Macon Bank was aware of the post-closing interest cash back agreements in four transactions. Macon Bank’s management decided to approve these four loans if the borrowers were otherwise qualified.

9. Macon Bank decided not to allow such post-closing interest cash back payments in its future loans, and in August 2007 changed its loan program to prohibit prepaid interest, rebates or large discounts without advance permission. Macon Bank’s underwriter communicated the bank’s change of position to Ultima and its broker.

10. Defendant closed Wildflower lot purchases for Macon Bank both before and after the change in Macon Bank’s policy.

11. After the change in its policy, starting in about mid August 2007, Macon Bank provided closing instructions to Defendant specifically prohibiting seller paid interest. Macon Bank provided such closing instructions in the following six closings of Wildflower lots:

Purchaser(s)	Lot Number	Specific Closing Instructions	Closing Date
Carson E. Kan & Edith A. Sanford	304	“No seller paid interest”	August 17, 2007
Thuy Truong & Ben Tu	199	“No seller paid interest”	August 22, 2007
Richard N. Danon	196	“No seller paid interest”	September 5, 2007
Brett Gossen &	234	“Seller paid interest carry will not be	September 11, 2007

Kathleen Gossen		permitted"	
Robert Pfister & Dorothy Maguire-Pfister	318	"Seller paid interest carry will not be permitted"	September 14, 2007
Alicia Renee Hobbs	179	"No seller paid interest carried"	September 17, 2007

12. Despite Macon Bank's change of policy, Ultima continued to provide cash back payments to buyers, including in the six closings identified in paragraph 11 above.

13. Defendant was aware that Ultima was making cash back payments to the buyers in the above referenced closings. Defendant's closing files for the six closings identified in paragraph 11 contained the Contract Addendum under which Ultima agreed to provide post-closing interest cash back payments for the buyers/borrowers.

14. These interest cash back transfers from Ultima to the purchasers were contrary to Macon Bank's specific closing instructions prohibiting seller paid interest.

15. Despite the closing instructions from Macon Bank specifically prohibiting seller paid interest or carry, Defendant closed these six above-identified transactions.

16. Defendant represented Macon Bank and the borrowers in the six above-identified transactions.

17. The HUD-1 Settlement Statements Defendant produced and provided to Macon Bank for the transactions identified in paragraph 11 did not show these seller paid interest payments as a disbursement.

18. The practical effect of the interest cash back arrangement was a reduced contract sales price.

19. In the six transactions identified in paragraph 11, Defendant calculated broker's commissions and made disbursements to the broker based on the reduced contract sales prices, determined by subtracting the interest cash back amount identified in the Contract Addendum from the purchase price listed on the first page of the Offer to Purchase and Contract. Yet, on the front page of the HUD-1 Settlement Statements Defendant did not list these reduced contract sales prices. Instead, he listed the full purchase price as stated on the first page of the Offer to Purchase and Contract as if not modified by the Contract Addendum.

20. The HUD-1 Settlement Statements Defendant produced and provided to Macon Bank for the 6 transactions identified in paragraph 11 concealed the true financial

nature of the transactions and were misleading. The HUD-1 Settlement Statements failed to show that part of Ultima's proceeds were being given to the buyers/borrowers, either by listing the reduced contract sales price in the block provided for the contract sales price on the first page of the HUD-1 Settlement Statement or by identifying the interest payments made by the seller as a disbursement.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a. By closing these six above-identified transactions despite closing instructions from Macon Bank specifically prohibiting seller paid interest or carry, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- b. By failing to show the true financial nature of the transactions on the HUD-1 Settlement Statements in the six above-identified transactions, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- c. By failing to act in compliance with Macon Bank's closing instructions, Respondent failed to diligently represent Macon Bank in the six above-identified transaction in violation of Rule 1.3; and
- d. By failing to notify Macon Bank of the seller paid interest cash back payments, and that the closings included conduct prohibited by its closing instructions, Respondent failed to reasonably consult with the client about the means by which the client's objectives are to be accomplished in violation of Rule 1.4(a)(2) and failed to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of 1.4(b).

SECOND CLAIM FOR RELIEF

21. Paragraphs 1 through 20 are re-alleged and fully incorporated as if set forth herein.

22. After the change in its policy, starting in about mid August 2007, Macon Bank provided closing instructions to Defendant specifically prohibiting "large credits" from Ultima in the following four closings of Wildflower lots:

Purchaser(s)	Lot Number	Specific Closing Instructions	Closing Date
Avichal Bhatnagar	312	"Any large credits from seller must be	August 3, 2007

		approved by underwriting prior to closing/funding.”	
Ashok Bhatnagar & Juhi Bhatnagar	314	“Any large credits from seller must be approved by underwriting prior to closing/funding.”	August 3, 2007
Robert Pfister & Dorothy Maguire-Pfister	318	“Large credits, discounts, rebates, or huge price reductions for the purchase price are not acceptable.”	September 14, 2007
Samir Bhatnagar	315	“Any large credits from seller must be approved by underwriting prior to closing/funding.”	September 21, 2007

23. Despite Macon Bank’s change of policy, Ultima continued to provide cash back payments to buyers, including in the four closings identified in paragraph 21 above.

24. Defendant was aware that Ultima was making cash back payments to the buyers in the above referenced closings. Defendant’s files for the four closings identified in paragraph 21 contained the Contract Addendum under which Ultima agreed to provide post-closing interest cash back payments for the buyers/borrowers.

25. The practical effect of the interest cash back arrangement was a reduced contract sales price.

26. These post-closing interest cash back transfers from Ultima to the purchasers were contrary to Macon Bank’s specific closing instructions prohibiting such seller credits.

27. Defendant was aware that the interest cash back transfers constituted a seller credit against the purchase price. Defendant calculated broker’s commissions and made disbursements to the broker based on the reduced contract sales prices, determined by subtracting the interest cash back amount identified in the Contract Addendum from the purchase price listed on the first page of the Offer to Purchase and Contract.

28. Despite the closing instructions from Macon Bank specifically prohibiting large credits from Ultima, Defendant closed these four above-identified transactions.

29. Defendant represented Macon Bank and the borrowers in the four above-identified transactions.

30. Although he had calculated the true lesser sales price after accounting for the interest cash back credit, Defendant failed to list these reduced contract sales prices on the front page of the HUD-1 Settlement Statements. Instead, he listed the full purchase price as stated on the first page of the Offer to Purchase and Contract as if not modified by the Contract Addendum.

31. The HUD-1 Settlement Statements Defendant produced and provided to Macon Bank for the four transactions identified in paragraph 22 concealed the true financial nature of the transactions and were misleading. The HUD-1 Settlement Statements failed to show that part of Ultima's proceeds were being given to the buyers/borrowers, either by listing the reduced contract sales price in the block provided for the contract sales price on the first page of the HUD-1 Settlement Statement or by identifying the interest payments made by the seller as a credit or a disbursement.

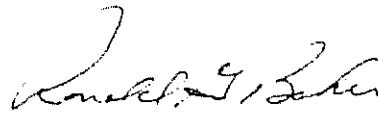
THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a. By closing these four above-identified transactions despite closing instructions from Macon Bank specifically prohibiting large seller credits, Defendant violated Rule 8.4(c);
- b. By failing to show the true financial nature of the transactions on the HUD-1 Settlement Statements in the four above-identified transactions, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c);
- c. By failing to act in compliance with Macon Bank's closing instructions, Respondent failed to diligently represent Macon Bank in the four above-identified transaction in violation of Rule 1.3; and
- d. By failing to notify Macon Bank of the seller paid interest cash back payments, and that the closings included conduct prohibited by its closing instructions, Respondent failed to reasonably consult with the client about the means by which the client's objectives are to be accomplished in violation of Rule 1.4(a)(2) and failed to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of 1.4(b).

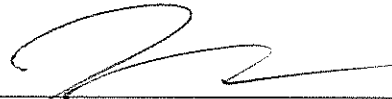
WHEREFORE, Plaintiff prays that:

1. Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
2. Defendant be taxed with the administrative fees and with actual costs permitted by law in connection with this proceeding; and
3. For such other and further relief as is appropriate.

This the 22nd day of July 2011.



Ronald G. Baker, Chair
Grievance Committee



Jennifer Porter
Deputy Counsel
North Carolina State Bar
P.O. Box 25908
Raleigh, N.C. 27611
919-828-4620, Ext. 262

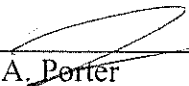
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Plaintiff's Amended Complaint was served upon Defendant by depositing it with the United States Postal Service in a postage prepaid envelope addressed to Defendant's counsel as follows:

Philip S. Anderson
Long, Parker, Warren, Anderson & Payne
14 South Pack Square
Suite 600
Asheville, NC 28801

This the 22nd day of July, 2011.



Jennifer A. Porter
Attorney for Plaintiff
The North Carolina State Bar